

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Aqua Illinois)	
)	
Proposed General Increase)	Docket No. 11-0436
In Water and Sewer Rates.)	

**PEOPLE OF THE STATE OF ILLINOIS'S
INITIAL BRIEF ON REHEARING**

**The People of the State of Illinois
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I. INTRODUCTION

On March 16, 2012, Viscofan USA, Inc. (“Viscofan”) filed a Petition for Rehearing of the Illinois Commerce Commission’s (“Commission”) Final Order on the Commission’s decision to adopt the Commission Staff’s (“Staff”) proposed increase of 20% to the Large General Service Rate. Rehearing was granted by the Commission on April 4, 2012. On rehearing, Viscofan submitted an updated analysis regarding the construction of its own water treatment facilities and its ability to self-supply and leave the Aqua system. Viscofan’s cost study showed that it was more economical for Viscofan to self-supply rather than stay with Aqua Illinois, Inc. (“Aqua”) if the Commission were to adopt the rate in the Final Order.

The People of the State of Illinois, by and through Lisa Madigan, Attorney General (“People” or “AG”) submit the following Initial Brief to address the impacts on other rate-payers in the Consolidated Water Division if Viscofan were to leave Aqua’s system and to propose a solution that would be potentially beneficial to both Viscofan and the other ratepayers in the Consolidated Water Division.

II. LOWER RATES FOR VISCOFAN SHOULD BE CONDITIONED UPON A LONG TERM AGREEMENT.

Viscofan is Aqua’s largest customer. Both its current rate and the rate in the Commission’s Final Order are significantly below its cost of service. The rate adopted by the Commission in its Final Order represents a 20% increase for Viscofan, and results in Viscofan contributing only 52.95% of the cost to serve it. ICC Staff Exhibit 14.0 at 2. As Viscofan’s cost of service increases, rate increases are necessary to address Viscofan’s declining contribution toward its cost of service.

In its Direct Testimony on Rehearing, Viscofan claims that it has positioned itself to leave the Aqua system and self-supply its water needs and that it would be more economical for

Viscofan to do so if the Commission does not decrease the rate adopted in the Final Order. The rates set by the Commission already require residential and other consumers to subsidize Viscofan's cost of service. Even if Viscofan, as Aqua's largest customer, were to leave Aqua's system, no further subsidy should be required of these customers.

The rate that the Commission approved for Viscofan is already *substantially* below its cost of service. The record demonstrated that more than \$670,000 in costs have already been shifted to other classes of service due to the lower rates paid by Viscofan.¹ It would not be reasonable or fair to lower Viscofan's rate any further or ask other customers to pay increased rates in this docket given the lack of any changes in circumstances to justify a change.

On rehearing, Aqua offered into evidence its four-year contract with Viscofan. Aqua Ex. 7.1. This contract reflects the tariff price and that Viscofan will take or pay for 35,000 ccf, which is 25% less than its average usage. *Id.* & Aqua Ex. 7.0 at 3. The contract provides minimal protections, and leaves Aqua's other customers exposed to having to bear Aqua's substantial costs to serve Viscofan. The Commission should not change Viscofan's rates on rehearing or increase other customers' rates because Aqua has failed to adequately address the risks posed by Viscofan's ability to self-provision water at a substantially lower cost than Aqua can offer. If the Commission were to simply lower the rate it adopted in its Final Order for Viscofan, Aqua's other customers would be at risk of having to bear an even larger percentage of Viscofan's cost of service while shouldering the same amount of risk that Viscofan will leave the system or significantly reduce its usage and the revenues it provides to Aqua.

Given Viscofan's threats to leave Aqua's system and the risk that Aqua's remaining customers could be asked to bear increased costs as a result, AG Witness Scott Rubin proposed a

¹ The Order adopted the Staff recommendation for Viscofan that collected \$672,279 less in revenues than Viscofan's allocated cost of service of \$1,430,892. Staff Ex. 9.0 at 35.

scenario that would benefit both Viscofan and Aqua's other customers. Mr. Rubin proposed that Aqua and Viscofan negotiate a longer-term contract that could include different rate-setting methods, such as those found in the Aqua Pennsylvania contract with one of its major customers: a seven year contract, a rate indexed to an inflation-based escalator, minimum monthly purchases, and maximum peaking factors. AG Ex. 3.0 at 5. Such a contract could couple a lower rate for Viscofan with commitments by Viscofan to provide an assured revenue stream over a long period of time. AG Exhibit 3.0 at 6. In the absence of a contract that reduces the risk to other customers and provides Viscofan and the other customers with long-term stability, however, there is no justification for providing Viscofan with the lower rate. Mr. Rubin provided an example where another Aqua company, Aqua Pennsylvania, has done exactly as Mr. Rubin proposes in this regarding a long-term contract for a relatively smaller customer. *See* AG Exhibit 3.02.

In Viscofan's Surrebuttal on Rehearing by Daniel Shenck, Viscofan addresses Mr. Rubin's proposal and states that it is "always open to negotiation with Aqua concerning a longer term economical contract." Viscofan Exhibit 2.0-RH at 5. In Aqua's Surrebuttal on Rehearing by Robert Levin, however, Mr. Levin states that Aqua is unwilling to further negotiate with Viscofan. *See* Aqua Exhibit 17.0 at 5. As Viscofan has demonstrated that it can realize substantial savings by self-provisioning and has very clearly stated that it will leave Aqua's system if its rates as reflected in the Final order are not lowered, Aqua's refusal to further negotiate with Viscofan betrays an inexplicable resistance to reducing risk, protecting its revenues, and keeping the rates of other classes of customers just and reasonable.

In the absence of a more comprehensive contract to address Viscofan's costs and Aqua's risks, it is apparent that Viscofan will likely leave Aqua's system, potentially causing rates for

the rest of Aqua's customers to rise. Aqua's refusal to even attempt to negotiate a contract to avoid that result amounts to imprudence in violation of its duty to serve its customers and maintain rates at just and reasonable levels. The People urge the Commission to require Aqua to attempt to negotiate a long-term contract with Viscofan that would provide Viscofan with a more certain rate while insuring a less risky revenue stream for Aqua.

III. CONCLUSION

The People request that no changes be made to the tariffed rates approved in the Final Order in this docket, and that the Commission require Aqua to attempt to negotiate a long-term contract with Viscofan to address the costs and risks associated with serving Viscofan.

Respectfully submitted,
The People of the State of Illinois
By LISA MADIGAN, Attorney General

A handwritten signature in black ink, appearing to be 'Cathy Yu', written over a horizontal line.

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